Supreme Court of the United States

October Term 1971

No. 71-1082

REUBEN O'D. ASKEW, *et al.*,

Appellants,

against

THE AMERICAN WATERWAYS OPERATORS, INC., *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

BRIEF OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES AS AMICUS CURIAE, IN SUPPORT OF AFFIRMANCE

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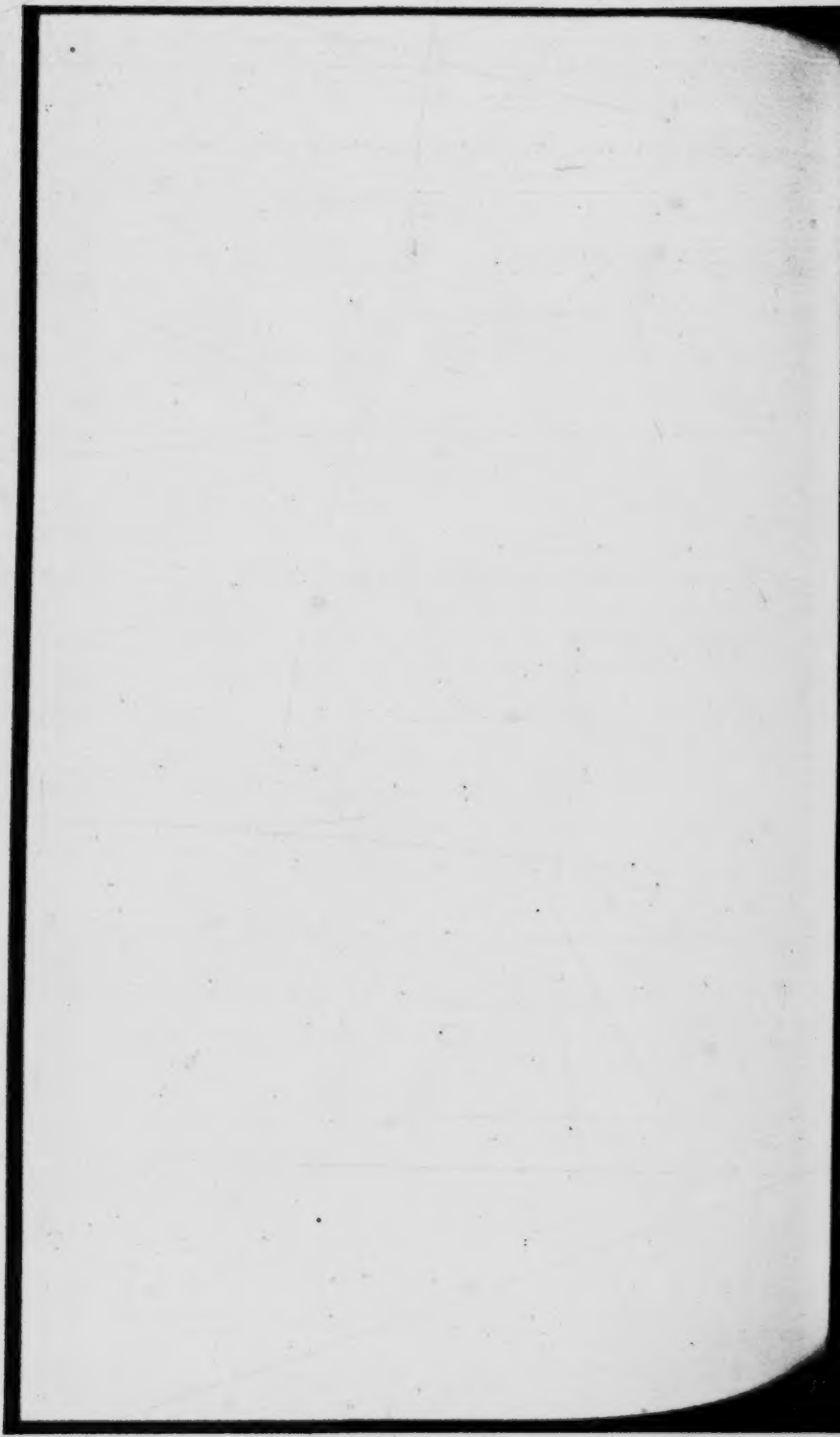

SUBJECT INDEX

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The Maritime Law Association of the United States ("The Association") respectfully submits this Brief as *amicus curiae* in support of affirmance, on consent of all parties, pursuant to Rule 42.2.[1]

Question Presented

This appeal has been taken by the Florida authorities from the unanimous decision of a three-judge court holding the Florida Oil Spill Prevention and Control Act[2] unconsti-

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[1] The original letters consenting to submission of this Brief have been submitted to the Clerk for filing herewith.

[2] Chapter 376, FLORIDA STATUES (1970); see Appendix, pp. 56-73.

tutional under the Admiralty Clause of the United States Constitution[3] on the ground that "admiralty cannot tolerate the inconsistency inherent in accommodating state remedial statutes to exclusively maritime substantive concepts." (335 F. Supp. 1241, at 1249). The basic question presented, therefore, is:

> "Whether the District Court erred in holding that the Florida Act is invalid under the Admiralty Clause."[4]

Interest of Amicus Curiae

The Maritime Law Association of the United States was founded in 1899, under the Presidency of the late Robert Dewey Benedict, Esq., author of the leading American Treatise on Admiralty. It has a nation-wide membership of more than 2,000 practicing admiralty attorneys, judges, professors of law and others interested in maritime law. The Association's 1,640 attorney members represent the full range of maritime interests—vessel owners, shippers, consignees, charterers, seamen, passengers, owners of shore-front properties, marine insurance underwriters and other actual or potential maritime claimants and defendants. Its objects are set forth as follows in its Articles of Association:

> "The objects of the Association shall be to advance reforms in the Maritime Law of the United States, to facilitate justice in its administration, to furnish a forum for the discussion and consideration of problems affecting the Maritime Law and its ad-

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[3] CONSTITUTION, ARTICLE 3, SECTION 2, CLAUSE 3: "The judicial Power shall extend . . . to all cases of admiralty and maritime Jurisdiction."

[4] Motion by Appellees American Institute, *et al.* to affirm, dated March 20, 1972, at p. 5.

ministration, and to act with foreign and other associations in efforts to bring about a greater harmony in the Shipping Laws, regulations and practices of different nations."

In furtherance of these objectives the Association, during the 73 years of its existence, has sponsored such legislation as the Salvage Act (1912),[5] the Carriage of Goods by Sea Act (1936)[6] and the Admiralty Extension Act (1948).[7] From time to time it recommended improvements in the former General Admiralty Rules of this Court, and more recently it assisted the Advisory Committee on Admiralty Rules in the unification of the General Admiralty Rules and the Federal Rules of Civil Procedure. The Association has actively participated, with the 30 other national maritime law associations constituting the Comité Maritime International,[8] in the movement to achieve maximum international uniformity in maritime law through the medium of international conventions, such as those relating to Assistance and Salvage (1910),[9] Ocean Bills of Lading (1924),[10] Collisions (1910), Limitation of Liability of Owners of Sea-Going Vessels (1957), Maritime Liens and Mortgages (1968), and Civil Liability for Oil Pollution Damage (1969).[11]

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[5] 46 U.S.C. §§ 727-31.

[6] 46 U.S.C. §§ 1300-15.

[7] 46 U.S.C. § 740.

[8] These now include the national associations of Argentina, Belgium, Brazil, Bulgaria, Canada, Chile, Denmark, Finland, France, Germany, Greece, India, Ireland, Israel, Italy, Japan, Jugoslavia, Mexico, Morocco, The Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, The United Kingdom, The United States, Uruguay, and The U.S.S.R.

[9] 37 STAT. 1658 (1913).

[10] 51 STAT. 233 (1937).

[11] 1910 Collision Convention, 6 KNAUTH'S BENEDICT ON ADMIRALTY 37 (*7th Ed., rev.*) (hereinafter BENEDICT); 1957 Limitation of Liability Convention, 6A BENEDICT 634; 1968 Maritime Liens and

The Association has consistently and vigorously maintained that the very nature of international shipping dictates that it should, to the maximum extent possible, be governed by internationally uniform laws, and that until such time as international uniformity can be achieved in a particular area of the maritime law, there should at least be nation-wide uniformity. The Association's objectives are completely in accord with the Admiralty Clause of the Constitution of the United States and the venerable line of decisions of this Court interpreting that Clause. In those decisions, commencing with *The Lottawanna*, 88 U.S. 558 (1874) and continuing through *Moragne* v. *States Marine Lines*, 398 U.S. 375 (1970), this Court has repeatedly held that except in areas of purely local concern, Congress alone may enact maritime legislation, and that in the absence of federal legislation in a particular area of the maritime law, it is for this Court and the lower federal courts to define the general maritime law which is to prevail throughout the United States.

The holding of the three-judge court from which this appeal has been taken is in perfect harmony with these decisions. A reversal would turn back the clock, undoing the nation-wide uniformity in the maritime law painstakingly achieved by this Court over the past century. Allowing each state unfettered, uncoordinated legislative control

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Mortgages Convention, *C. Davis, U.S. Delegation to 12th Session of Diplomatic Conference on Maritime Law, Report to the Secretary of State (October 10, 1967)*; and 1969 Oil Pollution Convention, 6A BENEDICT 951. These last four conventions have not as yet been ratified by the United States, although the Senate Foreign Relations Committee has reported favorably on the 1969 Civil Liability for Pollution Convention, *Senate Foreign Relations Committee, Executive Report No. 92-9, "1969 Oil Pollution Conventions and Amendments", August 5, 1971, 92nd Cong., 1st Sess.* The Conventions on Collisions and Limitation of Liability have been adopted by most of the principal maritime powers and the Association has recommended passage of Congressional statutes embodying the principles of these Conventions.

over maritime law in the area of water pollution prevention and liability would sound the death knell of uniformity, and eventually lead to nothing less than complete chaos in the waterborne commerce of the United States and of the foreign powers on whose merchant marines the American public has come to rely in large measure for a steady supply of needed commodities which must be carried by sea.

ARGUMENT

I

By adopting the Admiralty Clause of the United States Constitution, the individual States surrendered to the Federal Government the paramount power to legislate in the maritime field and to define the general maritime law which must prevail throughout the country.

The basic principle was correctly stated in the opinion below:

> "It is well settled that state legislation is invalid where it is in contravention with general admiralty rules or congressional enactments in the maritime field." *The American Waterways Operators, Inc.* v. *Askew*, 335 F. Supp. 1241, 1248 (M.D. Fla. 1971).

State legislation controlling water pollution from industrial plants and other shoreside installations is not within the province of the Association. Nor does the Association have any quarrel with the rights of states to legislate in areas of purely local concern, even though such legislation may relate to vessels employed on waters within the admiralty and maritime jurisdiction of the United States. State pilotage laws, for example, fall within this category. *Cooley* v. *Board of Wardens*, 53 U.S. 299 (1851). But legislation such as the Florida Act is plainly an unauthorized incursion into what the authors of the Constitution

realized must be an area wherein national uniformity is essential and only the Federal Government may act. *The Lottawanna, supra.*

Since *The Lottawanna*, this Court has repeatedly held that the Admiralty Clause, read in conjunction with the Necessary and Proper Clause,[12] grants to Congress the paramount power to legislate in the maritime field and charges the federal judiciary with the responsibility of defining the general maritime law which is to prevail throughout the country. *The Roanoke*, 189 U. S. 185 (1903); *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205 (1917); *Chelentis* v. *Luckenbach S.S. Co.*, 247 U. S. 372 (1918); *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149 (1920); *Washington* v. *Dawson & Co.*, 264 U. S. 219 (1924); *Garrett* v. *Moore-McCormack Co.*, 317 U. S. 239 (1942); *Pope & Talbot, Inc.* v. *Hawn*, 346 U. S. 406 (1953); *Kermarec* v. *Compagnie Generale*, 358 U. S. 625 (1959); *Kossick* v. *United Fruit Co.*, 365 U. S. 731 (1961); *Moragne* v. *States Marine Lines, Inc.* 398 U. S. 375 (1970); *and see Victory Carriers, Inc.* v. *Law*, 404 U. S. 202, *rehearing den.* 404 U. S. 1064 (1971).

The Florida Act purports, among other things, to provide for inspection of all vessels using Florida ports; to require installation of certain types of vessel equipment; to allow Florida officials to direct the movement of vessels and otherwise interfere with their operation; to establish new causes of action affecting vessels; to change the bases of liability for certain maritime torts from those established by the federal judiciary; to deny limitation of lia-

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[12] CONSTITUTION, ARTICLE 1, SECTION 8, CLAUSE 18: "The Congress shall have power . . . To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof".

bility with respect to pollution damage, and to require proof of financial responsibility, satisfactory to the local authorities, as a condition of access to Florida ports. These provisions plainly constitute an attempt to legislate on substantial matters of general concern within the admiralty jurisdiction. Under the "Admiralty" and the "Necessary and Proper" clauses and the decisions of this Court interpreting them, the State of Florida had no power to enact or enforce such legislation.

II

Congress has enacted legislation specifically covering the same areas as those covered by the Florida Act; that Act would therefore be unconstitutional even if it were not invalid under the Admiralty Clause itself.

As two eminent authorities have put it, "One constitutional truism may be got out of the way at once: Such state legislation is clearly invalid where it actually conflicts with the general maritime law or federal statutes." [13] The Florida Act bristles with provisions conflicting with the general maritime law and federal statutes, and is therefore "clearly invalid" under this rule.

a. The conflict between the Florida Act and federal law governing the maritime tort of water pollution.

With respect to the maritime tort of water pollution itself, the general maritime law provides the underlying principles. Liability is based upon fault; when fault exists, damages, including consequential damages, are recoverable

[13] GILMORE & BLACK, THE LAW OF ADMIRALTY (1957), p. 43.

for injury to property, subject to possible limitation as to amount, in accordance with the Limited Liability Act.[14] In addition, Congress has been legislating to control water pollution since 1886,[15] its latest effort being the Water Quality Improvement Act of 1970 (hereinafter "W.Q.I.A.").[16] The provisions of the Florida Act are everywhere in conflict with those of the general maritime law and the federal statutes relating to water pollution, thus creating an intolerable—and constitutionally impermissible—burden upon international, interstate and intrastate maritime commerce.

b. The conflict between the Florida Act, on the one hand, and federal legislation and international agreements governing the construction, maintenance and inspection of vessels, on the other.

If the Florida Act were held valid, Section 376.08 thereof would subject any domestic or foreign vessel using Florida ports to boarding by a State-appointed Port Manager "prior to its entry into port in order to ascertain the

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[14] 46 U.S.C. §§ 183-89. *See, e.g.*, Fireman's Fund Ins. Co. v. Standard Oil Co., 339 F.2d 148 (9th Cir. 1964); Salaky v. Atlas Barge No. 3, 208 F.2d 174 (2d Cir. 1953); California v. The Bournemouth, 307 F. Supp. 922 (C.D. Cal. 1969); Petition of New Jersey Barging Corp., 168 F. Supp. 925 (S.D.N.Y. 1958).

[15] The New York Harbor Act of 1886, 24 STAT. 329-0.

[16] 33 U.S.C. §§ 1161-75. As of this writing, an extensive revision of W.Q.I.A. is under consideration by Congress. See Federal Water Pollution Control Act Amendments of 1971, S.2770, 92nd Cong., 1st Session, passed by the Senate on November 2, 1971, together with H.R. 11896, passed by the House on March 29, 1972. On April 12, 1972 the Senate disagreed with the amendments by the House to S.2770 incorporated in H.R. 11896, appointed conferees, and requested a conference to resolve the differences, 118 CONG. REC. S6021-48 (daily ed. Apr. 12, 1972); the House appointed its conferees on May 1, 1972, 118 CONG. REC. H3770 (daily ed. May 1, 1972).

seaworthiness of the vessel and the presence of containment gear." But federal statutes [17] and regulations issued thereunder,[18] and the International Convention on the Safety of Life at Sea [19] already specify in elaborate detail the standards of construction, equipment, maintenance, and inspection which must be met by all power-driven vessels (other than motor boats, which are otherwise provided for). The provisions of the Florida Act relating to the equipment and seaworthiness of vessels using Florida ports, and to the inspection of vessels by officers of the State, go far beyond any permissible exercise of the police power. They are broad enough to permit the application of criteria conflicting with those established by valid federal legislation and international conventions to which the United States is a party, and are therefore plainly invalid under the Supremacy Clause of the Constitution.[20]

c. The conflict between the Florida Act and federal statutes relating to limitation of liability.

The Limited Liability Act [21] provides for limitation of the liability of a shipowner or demise charterer for damage not caused with his "privity or knowledge", to an amount equal to the value of the vessel and the voyage freights. Congress, in enacting W.Q.I.A., created an exception to the Limited Liability Act in respect of claims of the Federal Government for the cost of cleaning up a discharge of oil which the owner or operator of the vessel involved cannot prove was the result of an act of God, an act of war,

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[17] 46 U.S.C. §§ 361-436.

[18] 46 C.F.R. §§ 1-199.

[19] TIAS 5780, 16 UST 185, 536 UNTS 27. The Convention has been adopted by all of the important maritime countries, including the United States.

[20] CONSTITUTION, ARTICLE 6, CLAUSE 2.

[21] Note 14, *supra*.

negligence of the United States Government, or an act or omission of a third party. W.Q.I.A. provides for a separate "limitation fund" of $100 per ton of the vessel's gross tonnage applicable to such clean-up claims.[22]

While Congress of course had the power to amend one of its own statutes, *i.e.*, the Limited Liability Act, no state statute is valid if it contravenes that Act.[23] Insofar as the Florida Act purports to impose liability without limitation for the costs of removal of oil and other pollutants discharged from vessels, it conflicts with the Limited Liability Act and is unconstitutional for that reason, among others.

Appellants argue that a general provision of W.Q.I.A.[24] saves the Florida Act from unconstitutionality by reason of conflict with maritime law and federal statutes.

On this point the court below rightly said:

> "It has long been recognized that Congress is powerless to confer on the states authority to legislate within the admiralty jurisdiction [25] * * * and we cannot presume that WQIA was an attempt to do so. There is nothing in the language of the Act which purports to grant any such legislative authority to the states. The statement that Congress did not intend to preclude state imposed liability for oil pollution simply means that the states are free to enforce pollution control measures that are within

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[22] 33 U.S.C. § 1161(f)(1).

[23] Butler v. Boston Steamship Co., 130 U.S. 527 (1889); Paladini v. Flink, 26 F.2d 21 (9 Cir. 1928), *aff'd.* 279 U.S. 59 (1929).

[24] "Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil into any waters within such State". 33 U.S.C. § 1161(o)(2).

[25] Citing Knickerbocker Ice Company v. Stewart, 253 U.S. 149 (1920); The Lottawanna, 88 U.S. (21 Wall.) 558 (1875); The Steamer St. Lawrence, 66 U.S. (1 Black) 522 (1862).

their constitutional prerogative." 335 F. Supp. 1241, 1249.

Section 376.19 of the Florida Act indeed indicates an appreciation, however misplaced, of the need for some measure of uniformity;[26] Florida's mistake is its assumption that it is enough if there is state-wide uniformity, whereas it is in fact constitutionally required that uniformity in areas of maritime law of general concern must prevail throughout the United States. The logic which impelled the Florida legislature to include this provision is the same as that which resulted in the constitutional provision that only Congress may legislate with respect to maritime matters which are not of purely local concern. It is unconstitutional for Florida, or any other state or political subdivision thereof, to enact its own—and conflicting—legislation in this field.

III

The Act for the Extension of Admiralty Jurisdiction was a valid exercise by Congress of its Constitutional power to legislate in the maritime field.

Although Rule 40.1(d)(2) of this Court provides that "the brief may not raise additional questions", Appellant's Brief, for the first time, questions the constitutionality of the Act for the Extension of Admiralty Jurisdiction[27]

[26] The section provides:

"However, in order to avoid unnecessary duplication, no county, municipality, or other political subdivision of the state may adopt or establish a similar program of licensing and fees for the accomplishment of the purposes of this chapter".

[27] 46 U.S.C. § 740.

(hereinafter, "Admiralty Extension Act"). The Brief *Amicus Curiae* filed by the Attorney General of Georgia likewise questions the validity of that Act.

Even if the Admiralty Extension Act were declared unconstitutional (and the Association is convinced that it should not be), such a decision would not validate the Florida Act. At most it would entitle the states to legislate with respect to pollution damage caused by vessels to shoreside property. The Florida Act purports to do much more; it seeks to regulate liability for pollution of waters within the admiralty and maritime jurisdiction of the United States, and for damage to vessels employed on those waters, caused by discharges of oil and other substances from other vessels.

Bills to accomplish the reforms ultimately effected by the Admiralty Extension Act had long been sponsored by both the Maritime Law Association and the American Bar Association. See H. R. Report No. 1523, 80th Congress, 2d Session, and letter of Honorable W. J. Kenney, Acting Secretary of the Navy, annexed thereto, 1948 AMC 1503, 1505-6.

Prior to passage of the Admiralty Extension Act the admiralty and maritime jurisdiction of the Federal courts in tort cases was in most instances limited to injuries consummated on navigable waters; with certain exceptions hereinafter noted, injuries to persons or property on land (including bridges, piers and other extensions of the land) caused by vessels operating in navigable waters were not considered within the admiralty jurisdiction.

This restriction encouraged multiplicity of suits and sometimes led to highly inequitable results. Thus, if a vessel caused injury to a shore structure such as a drawbridge, or to persons thereon, a federal district court could not entertain an admiralty suit for the resulting damages, *Cleveland Terminal and Valley R.R. Co.* v. *Cleveland S.S.*

Co., 208 U. S. 316 (1908); *The Troy*, 208 U. S. 321 (1908); *Martin* v. *West*, 222 U. S. 191 (1911). On the one hand, admiralty had jurisdiction of a claim by the shipowner for damage to his vessel caused by negligent operation of the bridge, since the tort to the vessel was consummated on navigable waters. In such a case, the shipowner would normally invoke the admiralty jurisdiction, so that in the event of a finding of mutual fault he could obtain a partial recovery under the more enlightened admiralty rule whereunder contributory negligence does not bar a recovery, but merely diminishes the amount thereof. The bridge owner, on the other hand, had no right to file a cross-libel for his damages in the admiralty suit, but was obliged to bring a separate action in a court of common law jurisdiction, where he would be barred from recovering under the common law rule if contributory negligence were found.

A similarly anomalous result could occur in the case of a collision between a vessel and a land structure caused solely by the fault of a compulsory pilot. Before the Admiralty Extension Act, the owner of the land structure had no remedy (except against the pilot), because a compulsory pilot is not the agent or servant of the shipowner, *Homer Ramsdell Transp. Co.* v. *Compagnie Generale*, 182 U. S. 406, 416 (1901), and a court of common law jurisdiction is powerless to entertain a civil proceeding *in rem* against a vessel. *The Moses Taylor*, 71 U. S. 411, 430-1 (1866). Now, however, where injury is caused by a vessel to persons or property ashore as a result of the fault of a compulsory pilot, the Admiralty Extension Act permits the injured parties to invoke the admiralty jurisdiction and proceed *in rem* against the offending vessel.

This Court has repeatedly held that the authors of the Constitution, in extending the federal judicial power to "all cases of admiralty and maritime jurisdiction", recog-

nized the existence of a system of maritime law and intended to place both the substantive and procedural features of that law under national control, because of its intimate relation to navigation and to interstate and foreign commerce. *Panama R.R. Co.* v. *Johnson,* 264 U.S. 375, 386 (1924). This Court has also repeatedly held that the authors of the Constitution could never have intended that the law should remain stagnant; it has recognized that the maritime law existing at the time the Constitution was adopted became the law of the United States, "subject to power in Congress to alter, qualify or supplement it as experience or changing conditions might require". *Panama R.R. Co.* v. *Johnson, supra,* holding the Jones Act [28] constitutional; *The Thomas Barlum,* 293 U.S. 21, 23 (1934), upholding the constitutionality of the Preferred Ship Mortgage Act; [29] *Crowell* v. *Benson,* 285 U.S. 22, 39 (1932), holding the Longshoremen's and Harborworkers' Compensation Act [30] constitutional. See, also, *Providence and N.Y. S.S. Co.* v. *Hill Mfg. Co.,* 109 U.S. 578 (1883), declaring the Fire Statute [31] constitutional; *The Hamilton,* 207 U.S. 398 (1907), relating to the constitutionality of the Limited Liability Act,[32] and *Victory Carriers, Inc.* v. *Law,* 404 U.S. 202, *rehearing den.* 404 U.S. 1064 (1971), wherein this Court recognized the power of Congress to extend the jurisdiction of the federal courts beyond the historic boundaries of the maritime law.

As stated, even before passage of the Admiralty Extension Act the jurisdiction of admiralty in tort cases was

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[28] 46 U.S.C. § 688.

[29] 46 U.S.C. §§ 911-84.

[30] 33 U.S.C. §§ 901-50.

[31] 46 U.S.C. § 182.

[32] Note 14, *supra.*

not always limited to torts consummated on navigable waters. Thus, in cases falling under the Limited Liability Act, the federal district courts, by virtue of their admiralty jurisdiction, had power to entertain claims for injuries caused by vessels to persons and property ashore. *Richardson* v. *Harmon,* 222 U.S. 96 (1911). Independently of the Admiralty Extension Act, a suit under the Jones Act, which could be brought either in admiralty or as an ordinary "civil" suit in a federal district court or a state court of general jurisdiction, would lie even if the injury occurred ashore. *O'Donnell* v. *Great Lakes & Dock Co.,* 318 U.S. 36 (1943). Long before passage of the Admiralty Extension Act, damage caused by a vessel to an aid to navigation was within the admiralty jurisdiction, even though the navigational aid was affixed to the land. *The Blackheath,* 195 U.S. 361 (1904).

As noted by Mr. Justice White in *Victory Carriers* v. *Law, supra,* the Admiralty Extension Act has already withstood several attacks in the lower courts. See *United States* v. *Matson Navigation Co.,* 201 F.2d 610, 614-16 (9th Circuit 1953); *American Bridge Co.* v. *The Gloria O,* 98 F. Supp. 71, 73-74 (E.D.N.Y. 1951); *Fematt* v. *City of Los Angeles,* 196 F. Supp. 89, 93 (S.D. Cal. 1961). *See also* Fauver, *The Extension of Admiralty Jurisdiction to Include Maritime Torts,* 27 Geo. L.J. 252 (1949); Bergren, *Effects of Recent Legislation Upon the Admiralty Law,* 17 Geo. Wash. L.Rev. 353 (1949). To hold otherwise would be to resurrect the evils the Act was designed to cure, and has effectively cured, during the 24 years it has been in force.

Conclusion

The Florida Act contravenes a number of other provisions of the United States Constitution. However, the interest of the Association lies specifically in upholding the principles of national uniformity and harmony of the mari-

time law required by the Admiralty Clause, and any discussion of the remaining constitutional objections will be left to others.

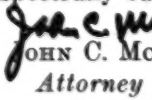
If there were a reversal of the decision below, it would be only a matter of time before each of the coastal states would enact its own statutes, covering not only the area of water pollution, but other areas of general concern in the admiralty. The various state water pollution statutes already enacted are by no means harmonious, and it could scarcely be expected that state legislation in other areas of maritime law would be any less free of conflicting provisions. The result would be an impossible tangle of differing laws and an intolerable burden on the maritime commerce of the United States.

The Association realizes that all levels of Government have important roles to play in the developing concern with ecological problems, which the members of the Association share with all responsible citizens. However, the position of the State of Florida is, in effect, to usurp powers which can constitutionally—and practically—be exercised by the Federal Government alone.

This Honorable Court should therefore affirm the decision below.

July 26, 1972.

Respectfully sumbitted,



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